abduction 150°. Internal and external rotation was normal. There was a deficiency in the radial aspect of the forearm which was deeply furrowed and scarred indicating loss of bone and muscle. All the fingers and thumb were limited in their range of movement and functions of the hand were confined to movements of the thumb and index finger. The fracture site was solidly united and in excellent alignment. (See medical report Ex. E). From the evidence it appeared that the appellant had a prolonged treatment. If he had agreed to have his hand amputated he would not have had to undergo all this painful treatment.

Mr. Murphy, counsel for the appellant, referred to several authorities which concerned the loss of an arm or a leg. He quoted one case where the arm was not amputated. In *Phua Tin Hang* v. *Teo Soh Choo* [1] the plaintiff who was 19 years of age at the time of the accident suffered several injuries, namely lacerated wound 2½ inches deep which cut all the flexor tendons and nerves of the left forearm, complete ulnar and medial nerve paralysis leaving a claw hand, lacerated wound in the mucous membrane of the mouth with mandible exposed. The effect of the injury was that he was virtually without the use of the left hand with which he could not pick anything up other than some thin piece of paper with his two fingers. For practical purposes he had lost the use of the hand. He has not had a job since the accident although he had tried. He was a food caterer's assistant earning $130 a month. The judge awarded special damages in the sum of $3,100 for loss of earnings and transport to and from the hospital, and general damages $25,000 being made up of $12,500 for loss of future earnings. Counsel for the appellant also referred to the case of *Jag Singh* v. *Toong Fong Omnibus Co. Ltd.* [2] where the Privy Council decided that the award should be "in line with a discernable trend or pattern of awards in reasonably comparable cases."

In his reply Mr. Morris Edgar for the first respondent quoted a passage in the judgment of Lord Morris of Borth-y-Gest in the same case at page 465:—

"It need hardly be emphasised that caution has to be exercised when paying heed to the figures of awards in other cases. This is particularly so where cases are merely noted but not fully reported. It is necessary to ensure that in main essentials the facts of one case bear comparison with the facts of another before any comparison between the awards in the respective cases can fairly or profitably be made. If however it is shown that cases bear a reasonable measure of similarity then it may be possible to find a reflection in them of a general consensus of judicial opinion. This is not to say that damages should be standardised or that there should be any attempt at rigid classification. It is but to recognise that since in a court of law compensation for physical injury can only be assessed and fixed in monetary terms the best that courts can do is to hope to achieve some measure of uniformity by paying heed to any current trend of considered opinion. As far as possible it is desirable that two litigants whose claims correspond should receive similar treatment just as it is desirable that they should both receive fair treatment. Those whom they sue are no less entitled."

In the case before us the appellant still retained his arm. He refused to have it amputated. According to the doctor he was able to do any work not requiring the use of the left arm and he could still wave with his hand as attendants have to do. He had a lot of pain and trouble for treatment but he is better off now with an arm.

In *Phua Tin Hang* v. *Teo Soh Choo, supra,* although the plaintiff suffered severe injury to his left arm he was awarded only $12,500 for loss of amenities, pain and suffering. He was 19 years old at the time of the accident and 21 years at the time of the trial. For loss of future earnings he was awarded $12,500. In the present case the appellant was a much older man, 50 years of age at the time of the accident and 54 at the date of the trial. He had himself to blame for pain and suffering which he had to bear for a prolonged period as he did not consent to have his arm amputated. In the circumstances I consider the amount awarded as reasonable.

Another ground raised by counsel for the appellant was that the learned judge gave damages for injuries only and failed to take into account any loss of future earnings when in his judgment he stated "In my view $15,000 should be ample damages for the injuries on the left arm." Although the learned judge has not expressed himself fully I am of the opinion that the expression "damages for the injuries" includes damages for loss of future earnings.

I would therefore, dismiss the appeal with costs.

Ismail Khan and **Ali JJ.** concurred.

Appeal dismissed.

Solicitors: *Murphy & Dunbar; Morris Edgar & Co.*

MOHAMED SIDIN v. PUBLIC PROSECUTOR

[F.C. (Barakbah L.P., Azmi C.J. (Malaya) and Chang Min Tat J.) September 20, 1966]

[Ipoh — Federal Court Criminal Appeal No. X18 of 1966]

Emergency — Trial by judge without there being held a preliminary inquiry — Whether regulations are ultra vires the Emergency (Essential Powers) Act, 1964 — Discriminatory legislation — Classification — Constitution of Malaysia, art. 8(1) — Emergency (Essential Powers) Act, 1964 — Emergency (Criminal Trials) Regulations, 1964, regs. 4 and 5.

The appellant had been convicted of offences under the Internal Security Act, 1960. The only ground argued on the appeal was that regulations 4 and 5 of the Emergency (Criminal Trials) Regulations were *ultra vires* the Emergency (Essential Powers) Act, 1964, as the Yang di-Pertuan Agong, had no power under the

Act to make regulations such as regulation 4 providing for trial before a judge sitting alone and regulation 5 providing for committal for trial before a judge without the process of a preliminary inquiry, which empower his delegate, the public prosecutor, to determine by an arbitrary act which person should be tried under the Emergency Regulations and which person should be tried under the ordinary criminal procedure. Such regulations were, it was submitted, discriminatory and *ultra vires* the Act.

Held: the regulations do not confer any arbitrary power on the public prosecutor. There was in the Act itself and in the regulations a nexus between the criminal trial or classification of criminal trials to be tried under the special procedure provided in the regulations and the object of the Act. Regulations 4 and 5 are therefore not *ultra vires* section 2(2)(d) of the Emergency (Essential Powers) Act, 1964.

Cases referred to:—

(1) *State of West Bengal* v. *Anwar Ali Sarkar* A.I.R. 1952 S.C. 75; [1952] S.C.R. 284.

(2) *Kathi Raning Rawat* v. *State of Saurashtra* A.I.R. 1952 S.C. 123; [1952] S.C.R. 435.

FEDERAL COURT.

Dato' S. P. Seenivasagam for the appellant.

Idris bin Yusoff (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Barakbah L.P.: The appellant was convicted in the High Court at Ipoh on three charges under sections 57(1)(a), 57(1)(b) and 58(1) of the Internal Security Act No. 18 of 1960, and sentenced to suffer death. Against the conviction and sentence he now appeals.

He was arrested by members of the Security Forces on 26th February, 1965, at Kampong Tuntong, Panchor, and was found to have in his possession a pistol, two hand-grenades complete with detonators, one Browning pistol, 73 rounds of 9 mm ammunition and two 9 mm Browning automatic pistol magazines. He had landed in Malaya with a group of Indonesian soldiers on the previous day.

In accordance with the provisions of the Emergency (Criminal Trials) Regulations, 1964 (Legal Notification No. 286/64), the appellant was committed to stand trial in the High Court without there being held a preliminary enquiry, and he was not tried by a jury or by a judge with the aid of assessors. He was tried by a judge sitting alone.

At the commencement of the trial a preliminary objection was taken by counsel for the appellant on the grounds that the Emergency (Essential Powers) Act, 1964, and the Regulations made thereunder were *ultra vires* the Constitution of the Federation of Malaysia in that they contravened the provisions of article 8(1) of the Constitution, which provides for equality before the law and equal protection of the law. It was urged at the trial that the said Act conferred upon the Yang di-Pertuan Agong powers to make discriminatory laws which were contrary to the Constitution and that the Regulations made under the said Act did provide for the discriminous application of the law relating to criminal trials.

At the close of the trial, the learned trial judge ordered a stay of the proceedings pending the stating of a case for the decision of the Federal Court on the preliminary points raised by counsel for the appellant. The case was stated in the following terms:—

(a) Whether the provisions of Regulation 4 of the Emergency (Criminal Trials) Regulations 1964 (L.N. 286/64) are inconsistent with the provisions of article 8 clause (1) of the Constitution and therefore void under article 4 clause (1) thereof,

and

(b) Whether the provisions of section 2 of the Emergency (Essential Powers) Act 1964 to the extent that they have the effect of authorising His Majesty the Yang di-Pertuan Agong to make the said Regulations are also void.

On the 28th April, 1966, the Federal Court returned the answers that —

(a) the provisions of Regulation 4 of the Emergency (Criminal Trials) Regulations 1964 are not inconsistent with the provisions of article 8 clause (1) of the Constitution and, therefore, not void under article 4 clause (1) thereof,

and

(b) the provisions of section 2 of the Emergency (Essential Powers) Act 1964 to the extent that they have the effect of authorising His Majesty the Yang di-Pertuan Agong to make the said Regulations are also not void.

Thereupon, the learned trial judge proceeded to judgment and, on the facts adduced in evidence, convicted the appellant and sentenced him to death.

At the appeal, counsel for the appellant admitted that he was bound by the decision of the Federal Court, which has not been appealed against to the Privy Council, and that regulation 4 was not *ultra vires* the Constitution, but urges as his only ground of appeal that regulations 4 and 5 are *ultra vires* the Emergency (Essential Powers) Act 1964. He says that there is a difference between his ground of appeal and the case stated before the Federal Court and founds his argument that under section 2 subsection (4) of the Emergency (Essential Powers) Act 1964, which reads as follows:—

"2. (4) An Essential Regulation and any order, rule, or by-law duly made in pursuance of such a regulation, shall have effect notwithstanding anything inconsistent therewith contained in any written law other than this Act or in any instrument having effect by virtue of any written law other than this Act."

a regulation which is inconsistent with any written law, including the Constitution, may be saved so long as it is not inconsistent with this Act and *vice versa* any regulation inconsistent with this Act is bad. Accordingly he argues

that while the Yang di-Pertuan Agong may, under section 2(2)(d) of the Act

"make special provisions in respect of procedure (including the hearing of proceedings in camera) in civil or criminal cases and of the law regulating evidence, proof and civil and criminal liability,"

he has no power under the Act to make regulations, such as regulation 4, providing for trial before a judge sitting alone and regulation 5 providing for committal for trial before a judge without the process of a preliminary enquiry, which empower his delegate, the public prosecutor, to determine by an arbitrary act which person should be tried under the Emergency Regulations and which person should be tried under the ordinary criminal procedure. Such regulations are, he submits, discriminatory and, therefore, *ultra vires* not of the Constitution but of the Act.

With respect, we find it difficult to follow this line of reasoning. Since it has been decided by the Federal Court in the case stated that regulation 4 is not inconsistent with article 8 clause (1) of the Constitution, it follows, to our mind, that regulation 4 is not discriminatory. *A fortiori,* it cannot offend against the Act.

But having regard to the somewhat unfortunate limitation of the reference to the Federal Court, we proceeded to hear further argument.

Counsel for the appellant urged upon the court the Indian case of the *State of West Bengal* v. *Anwar Ali Sarkar.*[1] In this case the constitutionality of section 5(1) of the West Bengal Special Courts Act No. 10 of 1950, which reads as follows:—

"A Special Court shall try such offences or classes of offences or cases or classes of cases, as the State Government may by general or special order in writing, direct."

was impugned as violating article 14 of the Indian Constitution (which is article 8 clause (1) of our Constitution). This Act is intituled "An Act to provide for the speedier trial of certain offences" and the preamble declares that "it is expedient to provide for the speedier trial of certain offences." The Act provides, *inter alia,* for committal for trial without a preliminary enquiry before a judge sitting without jury or assessors. The Supreme Court of India held by a majority that section 5(1) offends against the principle of equality before the law and is, therefore, bad. As Fazl Ali J. said at page 84:—

"The impugned Act has completely ignored the principle of classification followed in the Code (the Criminal Procedure Code) and it proceeds to lay down a new procedure without making any attempt to particularize or classify the offences or cases to which it is to apply."

The deputy public prosecutor, however, relies on the case of *Kathi Raning Rawat* v. *State of Saurashtra.*[2] In this case the Supreme Court of India, again by a majority, held that the Saurashtra State Public Safety Measures (Third Amendment) Ordinance of 1949 is *intra vires* and constitutional.

Consequent on the promulgation of the Saurashtra State Public Safety Measures Ordinance which provided, among other things, for the detention of persons acting in a manner prejudicial to public safety, maintenance of public order and peace and tranquillity, the Saurashtra State Public Safety Measures (Third Amendment) Ordinance of 1949 was passed, purporting to amend the previous Ordinance by inserting in it certain provisions, among which are committal of an accused person for trial before a special judge without committal proceedings and trial without jury or assessors. Section 11 of the Saurashtra Ordinance is identical with that of section 5(1) of the West Bengal Act. The wording of the section is as follows:—

"11. *Jurisdiction of special judges* — A special judge shall try such offences or class of offences or such cases or class of cases as the Government of the United State of Saurashtra say, by general or special order in writing, direct."

The Supreme Court of India has, however, found in this Ordinance a nexus between the basis of classification of the offences to be tried under the special procedure provided in the Ordinance and the subject of the Ordinance. As Fazl Ali J. said at page 128:—

"The Ordinance, as I have already stated, purported to amend another Ordinance the object of which was to provide for public safety, maintenance of public order and preservation of peace and tranquillity in the State. It was not disputed before us that the preamble of the original Ordinance would govern the amending Ordinance also, and the object of promulgating the subsequent Ordinance was the same as the object of promulgating the original Ordinance. Once this is appreciated, it is easy to see that there is something in the Ordinance itself to guide the State Government to apply the special procedure not to any and every case but only to those cases or offences which have a rational relation to or connection with the main object and purpose of the Ordinance and which for that reason become a class by themselves requiring to be dealt with on a special footing. The clear recital of a definite objective furnishes a tangible and rational basis of classification to the State Government for the purpose of applying the provisions of the Ordinance and for choosing only such offences or cases as affect public safety, maintenance of public order and preservation of peace and tranquillity. Thus, under s. 11, the State Government is expected to select only such offences or class of offences or class of cases for being tried by the special court in accordance with the special procedure, as are calculated to affect public safety, maintenance of public order, etc."

To return to the present appeal.

Following on the proclamation of a state of emergency by the Yang di-Pertuan Agong on the 3rd September, 1964, Parliament enacted the Emergency (Essential Powers) Act, 1964. The preamble is in these terms:—

"Whereas by reason of the existence of a grave emergency threatening the security of the Federation, a Proclamation of Emergency has been issued by the Yang

di-Pertuan Agong under article 150 of the Constitution:

And whereas Parliament by reason of the emergency considers it necessary for securing public safety, the defence of the Federation, the maintenance of public order and of supplies and services essential to the life of the community, that powers be conferred on the Yang di-Pertuan Agong to make such regulations as appear to him to be necessary:

And whereas it is hereby declared that this Act appears to Parliament to be required by reason of the emergency:"

Section 2 of the Act reads as follows:—

"2. (1) Subject to the provisions of this section, the Yang di-Pertuan Agong may make any regulations whatsoever (in this Act referred to as 'Essential Regulations') which he considers desirable or expedient for securing the public safety, the defence of the Federation, the maintenance of public order and of supplies and services essential to the life of the community.

(2) Without prejudice to the generality of the powers conferred by the preceding sub-section, Essential Regulations may, so far as appear to the Yang di-Pertuan Agong to be necessary or expedient for any of the purposes mentioned in that sub-section —

.. .. ..

(d) make special provisions in respect of procedure (including the hearing of proceedings in camera) in civil or criminal cases and of the law regulating evidence, proof and civil and criminal liability:"

The Emergency (Criminal Trials) Regulations, 1964, to which objection is now taken, are made by the Yang di-Pertuan Agong in exercise of the powers conferred by the above recited section 2. Objection is taken not to the exercise of the powers but, as stated before, to the exercise of the powers so as in effect to confer a power to discriminate between persons.

We do not agree with the contention. We do not consider that the regulations confer any arbitrary power on the public prosecutor. On the other hand, we are of the opinion, on the reasoning of the *Saurashtra's* case, *supra*, that there is in the Act itself and in the regulations a nexus between the criminal trial or classification of criminal trials to be tried under the special procedure provided in the regulations and the object of the Ordinance. Regulations 4 and 5 are, in our opinion, not *ultra vires* section 2(2)(d) of the Emergency (Essential Powers) Act, 1964.

As for the dreadful prospect envisaged by counsel for the appellant that two men charged with the same offence can be tried by two different modes of trial, depending on the whim and fancy of the public prosecutor or, as it is said, "with an evil eye and an unequal hand," the answer lies in the following passage from the judgment of Das J. in the *Saurashtra's* case, *supra*, at page 137:—

"In my judgment, this part of the section, properly construed and understood, does not confer an uncontrolled and unguided power on the State Government. On the contrary, this power is controlled by the necessity for making a proper classification which is to be guided by the preamble in the sense that the classification must have a rational relation to the object of the Act as recited in the preamble. It is, therefore, not an arbitrary power. . . . If at any time, however, the State Government classifies offences arbitrarily and not on any reasonable basis having a relation to the object of the Act, its action will be either an abuse of powers if it is purposeful or in excess of its powers even if it is done in good faith and in either case the resulting discrimination will encounter the challenge of the Constitution and the court will strike down not the law which is good but the abuse of misuse or the unconstitutional administration of the law creating or resulting in unconstitutional discrimination."

The appeal is dismissed, and the conviction and sentence confirmed.

Appeal dismissed.

Solicitors: *S. Seenivasagam & Sons.*

SHRIRO (CHINA) LTD. & ORS. v. THAI AIRWAYS INTERNATIONAL LTD.

[O.C.J. (Ambrose J.) September 24, 1966]

[Singapore — Suit No. 1097 of 1963]

Carriage of goods by air — Successive carriers — Liability of carrier although not named in air waybill — Loss by theft — No proof that defendants had not taken reasonable care to avoid loss — Negligence — Warsaw Convention Relating to International Carriage by Air, 1929, arts. 20 and 30.

The plaintiffs claimed damages against the defendants for the loss of eight cases of watches which were delivered to Air France for carriage by air from Basle-Mulhouse to Singapore. The air waybill provided that the goods were to be carried by Air France from Basle-Mulhouse to Bangkok and by Japan Air Lines from Bangkok to Singapore. Air France substituted the defendants for the Japan Air Lines for the carriage of the goods from Bangkok to Singapore. The goods were stolen while in the defendants' possession at the Singapore Airport. It was argued (1) that article 30 of the Warsaw Convention applied to the defendants although they were not mentioned in the air waybill and that they were liable as the carrier who performed the carriage during which the loss took place; (2) that the defendants could not avail themselves of article 20(1) of the Hague Convention as the air consignment notice did not contain all the particulars required in article 8(1) of the Convention; (3) that the defendants had not taken all necessary measures to avoid the loss of the goods by theft.

Held: (1) the Warsaw Convention does not require the names and addresses of subsequent carriers by whom carriages are to be performed and to whom article 30 would apply to be entered on the air waybill and the defendants would be liable as the carrier who performed the carriage during which the loss took place;

(2) the consignment note in this case stated the weight of the articles and as the provision of article 8(1) of the Warsaw Convention was ambiguous, the consignors must be deemed to have complied with the article as they had stated one of the particulars required in the article;

(3) on the facts the defendants had taken reasonable care to avoid the loss of the goods by theft and therefore they were entitled to avail themselves of article 20(1) of the Convention.

In this case the plaintiffs had not proved that the defendants did not take reasonable care to avoid the loss